

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

ANTHONY SMITH,

No. C 15-695 LB

Plaintiff,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

v.

[Re: ECF No. 1]

PUBLIC DEFENDER'S OFFICE OF
ALAMEDA COUNTY,

Defendant.

INTRODUCTION

Anthony Smith, an inmate currently at the Salinas Valley State Prison, has filed this *pro se* prisoner's civil rights action under 42 U.S.C. § 1983. His complaint is now before the court for review under 28 U.S.C. § 1915A. This order dismisses the complaint and requires Mr. Smith to file an amended complaint.

STATEMENT

Mr. Smith's complaint is rather short on details. He appears to contend that he has received inadequate representation in the criminal justice system, although he does not allege any facts as to what the Alameda County Public Defender's Office has done that amounts to a violation of his rights. Not only does he not allege any facts, Mr. Smith tries to convey his point by analogizing his situation to that of a defective car. *See, e.g.*, Docket # 1 at 5 ("I, like car (or cars), is damaged in

1 many parts. . . . I have been abused, my representation and service people are not up to par, and
2 fairness deserves a recall, and a new up to date car, until this defect is pinpointed").

3 ANALYSIS

4 A federal court must engage in a preliminary screening of any case in which a prisoner seeks
5 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
6 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
7 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
8 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*
9 complaints must be liberally construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right
11 secured by the Constitution or laws of the United States was violated, and (2) that the violation was
12 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
13 (1988).

14 The complaint fails to state a claim upon which relief may be granted. First, and most
15 important, Mr. Smith does not allege facts showing that one or more of his constitutional rights have
16 been violated. Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the
17 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement
18 need only ""give the defendant fair notice of what the . . . claim is and the grounds upon which it
19 rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). A plaintiff's "obligation to
20 provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a
21 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be
22 enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
23 U.S. 544, 553-56, (2007) (citations omitted). Mr. Smith should not compare himself to a car or
24 anything else in his amended complaint, and instead should write a simple statement describing what
25 happened or failed to happen that caused a violation of his rights.

26 Second, in his amended complaint, Mr. Smith must be careful to allege facts showing the basis
27 for liability for each defendant for each of his legal claims. He should link each defendant by
28 explaining what each involved defendant did or failed to do that caused a violation of his rights. *See*

1 *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).

2 Third, plaintiff may be attempting to seek damages for inadequate representation by his public
3 defender, but state court criminal defendants cannot sue their lawyers in federal court for most
4 lawyer-type mistakes. A public defender does not act under color of state law, an essential element
5 of an action under 42 U.S.C. § 1983, when performing a lawyer's traditional functions, such as
6 entering pleas, making motions, objecting at trial, cross-examining witnesses, and making closing
7 arguments. *Polk County v. Dodson*, 454 U.S. 312, 318-19 (1981); *cf. Vermont v. Brillon*, 556 U.S.
8 81, 84 (2009) (state court erred in ranking assigned counsel essentially as state actors for purposes of
9 evaluating speedy trial claim). If plaintiff wants to pursue a claim against the Alameda County
10 Public Defender's Office, or any individual public defender, for something other than deficient legal
11 representation, he should so allege in his amended complaint.

12 Fourth, the complaint may call into question the validity of Mr. Smith's conviction or sentence,
13 but that is not allowed under the *Heck* rule. The case of *Heck v. Humphrey*, 512 U.S. 477 (1994),
14 held that a plaintiff cannot bring a civil rights action for damages for a wrongful conviction or
15 imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or
16 sentence invalid, unless that conviction or sentence already has been determined to be wrongful. *See*
17 *id.* at 486-87. A conviction or sentence may be determined to be wrongful by, for example, being
18 reversed on appeal or being set aside when a state or federal court issues a writ of habeas corpus.
19 *See id.* The *Heck* rule also prevents a person from bringing an action that -- even if it does not
20 directly challenge the conviction or sentence -- would imply that the conviction or sentence was
21 invalid. The practical importance of this rule is that a plaintiff cannot attack his conviction *in* a civil
22 rights action for damages; the decision must have been successfully attacked *before* the civil rights
23 action for damages is filed. The *Heck* rule was first announced with respect to an action for
24 damages, but the Supreme Court has since applied the rule to an action that sought declaratory relief
25 as well as damages. *See Edwards v. Balisok*, 520 U.S. 641, 648 (1997). If success in the § 1983
26 action would "necessarily demonstrate the invalidity of confinement or its duration," the § 1983
27 action is barred no matter the relief sought (i.e., damages or equitable relief) as long as the
28 conviction has not been set aside. *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005). In his amended

1 complaint, Mr. Smith may only allege claims that do not call into question the validity of an existing
2 conviction or sentence.

3 If Mr. Smith wants to challenge his state court conviction or sentence in federal court, he may
4 file a petition for writ of habeas corpus after he exhausts state court remedies for each and every
5 claim he wishes to present to the federal court. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)
6 ("when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the
7 relief he seeks is a determination that he is entitled to immediate release or a speedier release from
8 that imprisonment, his sole federal remedy is a writ of habeas corpus").

9 **CONCLUSION**

10 For the foregoing reasons, the complaint is **DISMISSED WITH LEAVE TO AMEND**. The
11 amended complaint must be filed no later than **March 30, 2015**, and must include the caption and
12 civil case number used in this order and the words **AMENDED COMPLAINT** on the first page. Mr.
13 Smith is cautioned that his amended complaint will supersede existing pleadings and must be a
14 complete statement of his claims, except that he does not need to plead again any claim the court has
15 dismissed without leave to amend. *See Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir.
16 2012) (en banc). If Mr. Smith does not file an amended complaint, the action will be dismissed.

17 **IT IS SO ORDERED.**

18 Dated: February 27, 2015


19 LAUREL BEELER
20 United States Magistrate Judge
21
22
23
24
25
26
27
28